

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.8632 OF 2004

Pushpa D. Salian & Ors. ..Petitioners.

Vs.

Smt.Kamla C. Pangal & Ors. ..Respondents.

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Mr.M.V.Holamagi for the Petitioners.

Mr.V.E.Pereira for Respondent Nos.1 to 3.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

10th June, 2005.

P.C. :

1. Both the Trial Court and, in appeal, the Appellate Bench of the Small Causes Court have come to the conclusion that the original tenant Damodar Salian acquired suitable alternative premises viz. Block No.303, Baldeo Jyoti, Vinayak Nagar, Bhayander (West), District Thane. In fact, the finding is that neither the original tenant nor the members of his family thereafter resided in Mumbai. This is a pure finding of fact on which there are

concurrent findings.

2. On behalf of the Petitioners, it was sought to be urged that the alternative premises were acquired as a stop gap arrangement and that those premises were sold sometime in the year 1994. The Appellate Court has considered this aspect of the matter in some detail and has held that there was no evidence to the effect that the tenanted building had collapsed in the year 1978 upon which the alternative premises were acquired. This theory was sought to be advanced for the first time in the additional written statement which was filed in the year 1994. The original defendant shifted to the alternative premises at Bhayander in 1978. These findings do not warrant interference under Article 227.

3. It was then urged that the Respondents are not the widow and children of the deceased landlord Chandrayya Pangal. So far as the maintainability of the suit is concerned, the Respondents produced on record an extract from the property register card which was in the name of the deceased, Chandrayya, and the First Respondent. An effort

was made before the Trial Court to demonstrate that Vidya, the Second Respondent was in fact born not to Chandrayya, but to someone else. This aspect has been duly considered by both the Courts below. The Petitioners cannot be heard to question the parentage of Vidya, particularly at this distant point in time. In any case, there is no reason for the Court to accept the submission of the Petitioners in regard to the maintainability of the suit having regard to the property register card which shows that the property stood in the joint names of deceased Chandrayya and the First Respondent. The First Respondent was in any event entitled to maintain the suit.

4. That apart a statement is made on behalf of the Respondents that the decree has already been executed. In the circumstances, the interference of the Court under Article 227 is not warranted. The Petition is accordingly rejected.